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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,421	02/09/2004	Joe P. Schell	3815.00	6582

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EXAMINER

LAVINDER, JACK W

ART UNIT PAPER NUMBER

3677

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/773,421

Applicant(s)

SCHELL, JOE P.

Examiner

Jack W. Lavinder

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-6 is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson, 2592155.

Johnson discloses a necktie holder having a crossbar (21), a retainer (10) being secured to the opposed ends of the crossbar via the curved arched sections (16, 20) to form an elongated loop. Johnson's retainer is provided with a cut (13) that runs along the length of the retainer. The cut is u-shaped and allows the clip portion (11, 12) to be divided from the other part of the retainer to form a pair of selectively separable parts. Johnson also discloses a flexible link (22) having a medallion (26) suspended from the link, wherein the link is releasably connected to the opposed ends of the crossbar via chain links that are easily separated to remove or attach the link to or from the crossbar.

***Allowable Subject Matter***

3. Claims 3-6 are allowed.
4. Applicant's arguments filed 6/30/05 have been fully considered but they are not persuasive.

The applicant argues that

Examiner states that the link of Johnson is made releasable by "chain links that are easily separated to remove or attach the link to or from the crossbar." Nowhere in the specification of Johnson, however, is this written. Furthermore, the chain links illustrated in Johnson's drawing figures appear to be unbroken, endless rings that are incapable of being detached from a crossbar (10 as specified by the Examiner in the first Office action or 21 in the second Office action) without heroic effort. Thus, it would appear that the only way to remove the link of Johnson would be by breaking or cutting it. In any event, the speculation of an Examiner is not a teaching of the prior art that can properly be employed in a claim rejection based on 35 U.S.C. § 102(b).

The claim states "a flexible link being releasably connected to said opposed ends of said crossbar." Nothing in the claim specifically or indirectly requires a releasable coupling or connector located on the end of the flexible link. The scope of the claim is only limited to a flexible link that is capable of being released from the crossbar.

Clearly, this is the case with Johnson's device. The end links of the flexible link can be cut to remove the flexible link from the crossbar. The cut links can then be reattached to the crossbar by bending the link about the crossbar or soldering the link together about the crossbar. This is the only requirement outlined in the claim, i.e., the flexible link be capable of being released from the crossbar.

### ***Conclusion***

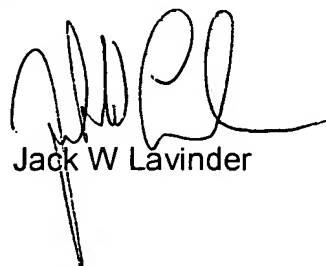
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W Lavinder

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Primary Examiner  
Art Unit 3677

10/27/05